

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FRANCES O'LEARY,

Plaintiff,

05 Civ. 6722 (HB)

-against-

AFFIDAVIT OF EDEN  
FITZGIBBONS MAURO

NY STATE UNIFIED COURT SYSTEM,

Defendant.

-----X

STATE OF NEW YORK )

COUNTY OF NASSAU )

Eden Fitzgibbons Mauro, being duly sworn, deposes and says:

1. I am partner in the firm, Mauro & Guzzardo, LLP, attorneys of record for the Plaintiff. I submit this affidavit in opposition to defendant's motion for summary judgment. The facts set forth in this affidavit are based upon review of documents and conversations with the Plaintiff herein.

Procedural History

2. On May 5, 2004, the Plaintiff filed a complaint of discrimination with the New York State Unified Court System Office of the Inspector General. Exhibit "A" hereto. Said complaint alleged race, color, national origin, sex, age and education discrimination. Exhibit "A".

3. On July 19, 2004, Plaintiff filed a Charge of Discrimination with the EEOC alleging she had been discriminated against by Defendant. Exhibit "1" to Sullivan Affidavit.

4. On July 26, 2005, Plaintiff filed the original Complaint in this action. Exhibit "2" to Sullivan Affidavit.

5. On or about September 20, 2005, Defendant served its Answer to the Original Complaint. Exhibit "B" hereto.

6. On July 19, 2006, Plaintiff filed her second Charge of Discrimination against Defendant with the EEOC. Exhibit "3" to Sullivan Affidavit.

7. On November 13, 2006, Plaintiff filed an Amended Complaint. Exhibit "4" to Sullivan Affidavit.

8. Plaintiff's Deposition was held on September 7, 2006. Relevant portions of the deposition transcript are annexed hereto as Exhibit "C".

Promotions sought

9. The Affidavit of John Sullivan sets forth the majority of the promotions which are the subject of this lawsuit. In order to avoid repetition, only issues not covered by the Sullivan Affidavit are discussed herein.

10. In December 2002, Plaintiff applied for the position of Deputy Chief Clerk V. Exhibit "C" and Exhibit "D" hereto.

11. The Deputy Chief Clerk V position was given to Serena Springle. Exhibit "C".

12. Serena Springle's resume indicates that, at the time of appointment, she only possessed a high school diploma. Exhibit "E" hereto.

13. In November 2004, Plaintiff applied for the Chief Clerk of the Bronx County Surrogate's Court position. Affidavit of John Sullivan, par. 69. Plaintiff was not granted an interview. Affidavit of John Sullivan, par. 71.

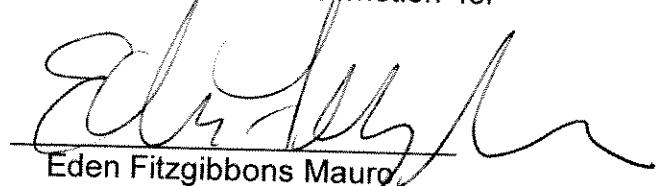
14. Angel Cruz and John Raniolo were both granted an interview.  
Affidavit of John Sullivan, par. 71 and exhibit 23 thereto.

15. John Raniolo was listed as the number two (2) preference of all candidates. Exhibit "F" hereto.

16. Annexed herewith are copies of an Affidavit of Frances O'Leary and Affidavit of Michael Cusack.

**WHEREFORE**, it is respectfully requested that Defendant's motion for summary judgment be denied in all respects.

Sworn to before me this  
30<sup>th</sup> day of April, 2007



Eden Fitzgibbons Mauro

  
Notary Public

Deborah Gale, Notary  
State of New York  
County of Suffolk  
No. 01GA 466698  
Commission expires August 3, 2010

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

FRANCES O'LEARY,

Plaintiff,

-against-

NY STATE UNIFIED COURT SYSTEM,

05 Civ. 6722 (HB)

PLAINTIFF'S AFFIDAVIT  
IN OPPOSITION TO  
DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

Defendant.

-----X

STATE OF NEW YORK )

COUNTY OF NASSAU )

FRANCES O'LEARY, being duly sworn, deposes and says:

1. I am the Plaintiff herein and I make this Affidavit in opposition to Defendant's Motion for Summary Judgment.
2. I am a Caucasian female.
3. I have been employed by the Unified Court System for the past twenty nine (29) years as, inter alia, a Uniformed Court Officer, Senior Court Clerk and Principle Court Attorney.
4. During my tenure with the Unified Court System, I have continued to attend seminars and conferences in specialized areas of law: For example for the past six (6) years I have attended the R.C. Diocese of Brooklyn, Annual Lawyers' Conference, at which Surrogate Holzman lectures. The subject of these conferences is trusts and estates. This is in addition to the annual January CLE's (12 credits annually) provided by Unified Court System for their staff.

5. In or about 2003, I became certified as a Court Examiner under the Guardianship Rules (Rule 36).

6. On May 28, 2004, I submitted a formal complaint of discriminatory treatment with the New York State Unified Court System Office of Inspector General. I complained of discrimination in promotions on account of race, color, national origin, sex and age. A copy of the Complaint is annexed hereto as exhibit "1".

7. On or about July 19, 2004, I filed my first Charge of Discrimination with the EEOC alleging discrimination in promotions. Exhibit 1 to Defendant's Rule 56.1 Statement.

8. On or about July 26, 2005, I filed my complaint of discrimination, alleging, inter alia, failure to promote base upon race, ethnicity, national origin and gender, in the Southern District of New York. Exhibit 2 to Defendant's Rule 56.1 Statement.

9. Thereafter, in December 2005, while working for J. Sackett, Bronx County, I was given a letter of termination.

10. In or about December 2005, I interviewed for a position with J. Caesar Cirigliano, a Court of Claims Judge. During the course of the interview, J. Cirigliano asked me why I wanted to work for a judge who only had one (1) year left before mandatory retirement. I responded that the one (1) year working for him would give me time to pursue other positions within the Court System. I further advised him that I had filed a claim of discrimination with both the Inspector General's office and the EEOC and had filed a complaint in Federal

Court. J. Cirigliano responded that he did not want to know about my lawsuit. I was thereafter denied the position.

11. On or about January 31, 2006, I was called into a meeting with J. Salmon, Administrative Justice for the Civil Term. During the course of that meeting, J. Salmon informed me that he would place me in the law pool on the condition that I do him a "favor". When I asked what the favor was, he responded, that I "had a reputation of embarrassing people" and that he did not want me to "embarrass" him. I asked if he was referring to my claims of discrimination, and he responded that he didn't want to hear about it. Because I needed the job, I agreed not to "embarrass" him.

12. However, when I joined the Law Department, my position title was changed, without my consent, to Court Attorney, a position covered by the union. As a result of losing my title I lost income as a result of this change because I had to pay union dues, I am subject to compulsory donation of annual leave time and I no longer received the same level of dental and optical benefits.

**WHEREFORE**, it is respectfully requested that Defendant's motion for summary judgment be denied in all respects.

Sworn to before me this  
day of April, 2007

Deborah Gale  
Notary Public

Deborah Gale, Notary  
State of New York  
County of Suffolk  
No. 01GA 4000000  
Commission expires August 3, 2010

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

FRANCES O'LEARY,

Plaintiff,

05 Civ. 6722 (HB)

-against-

AFFIDAVIT OF  
MICHAEL CUSACK

NY STATE UNIFIED COURT SYSTEM,

Defendant.

-----X

STATE OF NEW YORK )

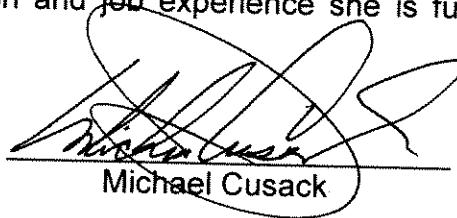
:  
COUNTY OF NASSAU )

MICHAEL CUSACK, being duly sworn, deposes and says:

1. I worked within the Unified Court System for over twenty nine (29) years as, inter alia, a Uniformed Court Officer, Assistant Court Clerk, Senior Court Clerk and Deputy Chief Clerk V.
2. Over the past twenty nine (29) years, in my various positions with the Unified Court System, I have come to know Frances O'Leary and I am familiar with her work experience and work performance as a Court Clerk and a Court Attorney.
3. As part of my job responsibilities as a Deputy Chief Clerk V, I sat on various panels designed to review resumes for interviews, conduct interviews and ultimately recommend a candidate to fill Clerk positions within the Unified Court System.

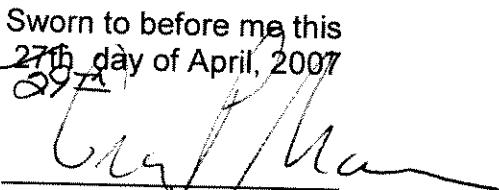
4. Having sat on panels and having worked as a Deputy Chief Clerk V for over fifteen (15) years, I am fully familiar with the job requirements for each position.

5. Had Fran's resume come before me, I would have unequivocally recommended her for an interview for a Chief Clerk V, Chief Clerk VI or Chief Clerk VII position. Based upon her education and job experience she is fully qualified for the each of these positions.



Michael Cusack

Sworn to before me this  
27th day of April, 2007



Notary Public  
**FRANK J. MAURO, ESQ.**  
Notary Public State of New York  
No. 02MA6002073  
Qualified in Suffolk County  
Commission Expires March 11, 2010

**New York State Unified Court System Office of the Inspector General**THE SPECIAL  
UCS-18 (8/02)**CLAIM OF DISCRIMINATORY TREATMENT**

Please complete this form to file a claim of discriminatory treatment with the Unified Court System's Office of the Inspector General. Any individuals contacted by the Office of the Inspector General will be asked not to disclose the facts or contents of your claim unless disclosure is necessary.

Name: FRANCES O'LEARY RECEIVED  
 Title: PRINCIPAL CT ATTORNEY TO JUSTICE  
 Work Location: BX SUP. 851 GRAND CONCOURSE  
 City: BX State: NY Zip: 10451 Work Phone: (718) 590-8932  
 Home Address: 23 07 PARKSTREET AV  
 City: BX State: NY Zip: 10469 Home Phone: (718) 881-7023

Following receipt of your claim, you will be advised of the name and telephone number of the staff member responsible for investigating your claim. You also will be informed if the office needs further information or if there is a reason why the office cannot proceed with the investigation.

## 1. I believe that I have been treated in a discriminatory manner based on my:

Race  
 Color  
 Creed  
 Religion  
 National Origin  
 Sexual Orientation

Sex (including Sexual Harassment)  
 Age  
 Disability  
 Marital Status  
 Other (please specify):  
EDUCATION

## 2. I believe that the act or treatment described below is discriminatory:

Failure to afford me an interview for the title of Chief Clerk, Civil Division, BX Sup.

## 3. I believe that the following individual(s) has (have) acted in a discriminatory manner:

Frances Egan, Administrative Justice Court Clerk, BX, NY, NY

## 4. Date of act or treatment (or indicate if ongoing):

Ongoing. See documents submitted to forwarded by Frances Egan, Diversity Director, Office of the Clerk, BX, NY, NY

## 5. Witnesses (include names, work locations and telephone numbers):

The documents submitted by Ms. Egan, as indicated above.

I authorize the New York State Unified Court System's Office of the Inspector General to use my name in investigating this claim.

Signature: Frances O'LearyDate: 5/28/04

Please attach any additional information you may have about the claim and mail this form or a copy of it to:

Office of the Inspector General  
 Office of Court Administration  
 25 Beaver Street  
 Attention: Managing Inspector General for Bias Matters  
 New York, New York 10004  
 (646) 386-3507

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FRANCES O'LEARY,

Plaintiff

ANSWER

- against -

05 CV 6722 (HB)

NY STATE UNIFIED COURT SYSTEM,

Defendant.

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Defendant, by its attorney, Michael Colodner, answering the Complaint herein:

1. Denies the allegations contained in paragraph "1" of the Complaint, except admits that plaintiff purports to bring this action on the grounds enumerated therein.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Complaint.
3. Denies the allegations contained in paragraph "3" of the Complaint, except admits that the Office of Court Administration has offices at 25 Beaver Street, New York, New York.
4. Denies the allegations contained in paragraph "4" of the Complaint, except admits that the Unified Court System of the State of New York employs more than 15 persons.

5. Denies the allegations contained in paragraph "5" of the Complaint, except admits that at all times relevant to this action plaintiff was an employee of the Unified Court System of the State of New York.

6. Admits the allegations contained in paragraph "6" of the Complaint.

7. Denies the allegations contained in paragraph "7" of the Complaint, and refers to the statutory provision referred to therein for its contents.

8. Denies the allegations contained in paragraph "8" of the Complaint, except admits that venue is properly in the Southern District of New York.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the Complaint, except admits that plaintiff's current title is Principal Law Clerk to Judge and she is assigned in that capacity to a Justice of the Supreme Court, Bronx County.

11. Denies the allegations contained in paragraphs "11" through and including "23" of the Complaint.

12. Denies the allegations contained in paragraph "24" of the Complaint, except refers to the response to plaintiff's Charge of Discrimination that was submitted to the Equal Employment Opportunity Commission on behalf of the Unified Court System of the State of New York for the contents thereof.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint, except admits that plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Complaint, except admits that the Equal Employment Opportunity Commission issued a Dismissal and Notice of Rights letter to plaintiff dated April 29, 2005.

15. As and for an answer to paragraph "27" of the Complaint, repeats and realleges paragraphs "1" through "14" of this Answer.

16. Denies the allegations contained in paragraph "28" of the Complaint.

17. As and for an answer to paragraph "29" of the Complaint, repeats and realleges paragraphs "1" through "16" of this Answer.

18. Denies the allegations contained in paragraph "30" of the Complaint.

19. As and for an answer to paragraph "31" of the Complaint, repeats and realleges paragraphs "1" through "18" of this Answer.

20. Denies the allegations contained in paragraph "32" of the Complaint.

21. Alleges that paragraph "33" of the Complaint makes no allegations to which a response is required.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

22. Plaintiff has failed to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

23. This Court lacks subject matter jurisdiction over plaintiff's causes of action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

24. This action is barred in whole or in part by the statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

25. Defendant is immune from suit pursuant to the Eleventh Amendment of the United States Constitution and the doctrine of sovereign immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

26. Defendant is not subject to liability under the Administrative Code of the City of New York.

WHEREFORE, the Complaint should be dismissed.

Dated: Albany, New York  
September 20, 2005

MICHAEL COLODNER  
Attorney for Defendant  
Office of Court Administration  
Empire State Plaza  
4 ESP, Suite 2001  
Albany, New York 12223-1450  
(518) 474-7469  
By:



John J. Sullivan (JJS9947)  
Assistant Deputy Counsel

1 O'LEARY

2 A. To aid people seeking to pursue  
3 a matter themselves without the benefit of  
4 an attorney.

5 MR. COREN: Before the next  
6 question.

7 (The witness and her counsel  
8 conferred off the record.)

9 A. In the Central Clerk's office  
10 and Surrogate's --

11 MR. COREN: Do you want to add  
12 to your answer that you previously gave?

13 THE WITNESS: Yes.

14 Q. Please do.

15 A. When I was assigned to the  
16 Central Clerk's office in the Surrogate's  
17 office, I did supervise people in that  
18 office.

19 Q. Who did you supervise?

20 A. The court aides -- I am not sure  
21 of the titles of the people that I  
22 supervised there, but I know they were  
23 unrated clerks.

24 Q. And how did you supervise?

25 A. I'm not sure I understand your

1 O'LEARY

2 question.

3 Q. You said you supervised them.

4 How did you supervise them. What did you  
5 supervise them about?

6 A. In the performance of their  
7 duties.

8 Q. Which were what?

9 A. Getting the correct documents to  
10 copy and to certify, I did the  
11 certification.

12 Q. So with respect to that, you  
13 would tell a court aide to go and fetch  
14 the will from the file and bring it to you  
15 and make a copy?

16 A. From the vault.

17 Q. From the vault and make a copy.  
18 Would you make a copy or the court aide  
19 would make the copies?

20 A. They would make the copies.

21 Q. And they would bring you the  
22 will and the copies together and then you  
23 would certify them?

24 A. Yes.

25 Q. And that's what you mean by

1 O'LEARY

2 supervising them?

3 A. It's not limited to that, but  
4 yes.

5 Q. What else did you do to  
6 supervise them?

7 A. Direct them in answering  
8 information that came from the public. I  
9 don't recall other things, but I know when  
10 I was there, I was there as their  
11 supervisor.

12 Q. And you were assigned, that was  
13 your role, to supervise the court aides  
14 when you were there?

15 A. Yes.

16 Q. And you don't recall what else  
17 you supervised them doing?

18 A. Not really.

19 Q. When you say that you interacted  
20 with the court aides with respect to  
21 inquiries from the public, is that  
22 correct?

23 A. Yes.

24 Q. So did you deal directly with  
25 the public or did the court aides?

1 O'LEARY

2 A. They could generally refer the  
3 person to me, but sometimes I would have  
4 them escort them to a particular office,  
5 direct them to a particular agency.

6 Q. You would tell the aide to tell  
7 them where to go?

8 A. Ask them to direct them, yes.

9 Q. Did you prepare any performance  
10 evaluations for the aides?

11 A. No.

12 Q. Did you monitor their time?

13 A. I would make sure they took an  
14 hour for lunch, but other than that, no.

15 Q. Going back to the Surrogate  
16 Court for a minute, when you were in the  
17 administration department, did you  
18 supervise anybody there?

19 A. I believe there was an unrated  
20 clerk there.

21 Q. What was the nature of you  
22 supervising the duties of that unrated  
23 clerk, if you recall?

24 A. I don't.

25 Q. What about in the courtroom, did

1 O'LEARY

2 cut at that point had been more than I  
3 anticipated, and in Criminal Court I ran  
4 into a stretch where there was nothing to  
5 do. And so the opportunity came up,  
6 Justice Bernheim asked me if I would go to  
7 work for her and I jumped at it.

8 Q. Did anyone help you get that job  
9 with Justice Bernheim?

10 A. No.

11 Q. Did she advertise for that  
12 position?

13 A. No.

14 Q. She just came to you and said I  
15 have an opening, would you like to fill  
16 it?

17 A. Yes.

18 Q. And you worked as a principal  
19 court attorney with Justice Bernheim, is  
20 that correct?

21 A. Correct.

22 Q. As the principal court attorney,  
23 were your duties other than legal  
24 research?

25 A. She was a fully elected Justice,

1 O'LEARY

2 she did have a staff and she did have  
3 projects. So I supervised the  
4 confidential.

5 MS. TIMON: When you say  
6 confidential, what do you mean? Who is  
7 that?

8 THE WITNESS: As a Justice, she  
9 is entitled to a personal secretary, a  
10 confidential secretary. The confidential  
11 secretary at that time was 18 years old.  
12 We had -- I supervised her time and leave,  
13 I supervised as we updated books. The  
14 Judge had a couple of projects going on  
15 that we would help her with from time to  
16 time.

17 Q. What was her name, the person  
18 you supervised?

19 A. Carmen Watkins.

20 Q. Did you sign her time sheets?

21 A. Again, I initialed them for the  
22 Judge, but I did not sign off on them.

23 Q. Was there anybody else that you  
24 supervised besides the Judge's secretary?

25 THE WITNESS: One moment.

1 O'LEARY

2 MR. COREN: Counsel?

3 MR. SULLIVAN: Let the record  
4 reflect that the witness is conferring  
5 with her attorney before answering the  
6 question.

7 MR. COREN: She's ready to  
8 answer.

9 A. I want to amend my answer as to  
10 Judge Boyle, and it would also apply to  
11 Judge Savarese, but not to Judge Monahan.  
12 Judge Savarese and Judge Boyle, and I  
13 believe Judge Griffin, but that I am not  
14 positive of, each had student interns, and  
15 I did supervise them, assigned them work,  
16 reviewed their work, gave them projects.  
17 I know Bernheim did not abide by interns.

18 Q. So was there anyone else that  
19 you did supervise when you were a  
20 principal clerk to Judge Bernheim?

21 A. No.

22 Q. And how did it come to be that  
23 you left working for Judge Bernheim after  
24 a year?

25 A. She reached 70 within that year,

1 O'LEARY

2 chose not to seek certification, and  
3 retired.

4 Q. How did you come to your next  
5 job with Judge Ruiz?

6 A. I was recommended to Judge Ruiz.

7 Q. By whom?

8 A. Several people within the court  
9 system.

10 Q. Who were they?

11 A. The woman who is now Justice  
12 Manzanet among others. I had dropped off  
13 a resume to her, was interviewed and  
14 hired.

15 Q. You dropped off a resume to  
16 Judge Ruiz?

17 A. Correct.

18 Q. Who was the other person besides  
19 Judge Manzanet, which could you spell for  
20 the record, take a shot at spelling.

21 A. M-a-n-z-a-n-e-t. Besides Judge  
22 Manzanet, probably Justice Boyle, Judge  
23 Bernheim, Judge Price. I don't know who  
24 else.

25 Q. Did you ask those people to

1 O'LEARY

2 provide recommendations?

3 A. I don't think I asked Judge, at  
4 that time Sallie, Manzanet. I think Price  
5 did speak for me. I know Boyle did speak  
6 for me, but I don't think I asked -- I  
7 don't recall if I asked Boyle to speak for  
8 me.

9 Q. How long did you work for Judge  
10 Ruiz?

11 A. Three years.

12 Q. When did you end your employment  
13 with Judge Ruiz?

14 A. Probably January of '03, if I  
15 recall correctly.

16 Q. What were the circumstances of  
17 your leaving her employment?

18 A. Judge Ruiz had been a supervisor  
19 with the Legal Aid Society Criminal  
20 Division. Most of my time, virtually all  
21 of my time in court attorney titles had  
22 been on the criminal side. She decided to  
23 give the civil term a shot and ultimately  
24 we agreed that the civil term was not  
25 quite my cup of tea. It was a hard

1 O'LEARY

2 learning curve, very steep learning curve.

3 Q. So you started to work with her  
4 when she went to the civil term?

5 A. I started working with her when  
6 she was on the criminal term. Sometime  
7 thereafter she decided that she wanted to  
8 give the civil term a shot, they needed  
9 the people, they were backlogged, the  
10 criminal terms were declining and she  
11 transferred from the criminal term to the  
12 civil term.

13 Q. How long did you continue  
14 working for her after she transferred to  
15 to the civil term?

16 A. Probably a year and a half,  
17 maybe a little more.

18 Q. You said a hard learning curve  
19 in the civil term. What do you mean?

20 A. It was a different style of  
21 work, it was a different volume of work,  
22 something I was not overly familiar with.  
23 The Judge herself was not as conversant  
24 with it as others were, and it was very  
25 difficult. At first, colleagues were

1 O'LEARY

2 helpful.

3 Q. What sort of concepts were  
4 difficult to you?

5 A. Summary judgment motions,  
6 threshold issues.

7 Q. Anything else?

8 A. Some of the procedural aspects  
9 of the civil term were problematic for me.

10 Q. Problematic in what sense?

11 A. Sorry?

12 Q. Problematic in what sense?

13 A. I didn't understand the medical  
14 terms, I didn't understand the impact of  
15 certain things within motion practice,  
16 which is basically what I was addressing.  
17 We were doing jury charges. What would  
18 flow for some who are more experienced in  
19 it did not come that easily, and because  
20 we each had a felony background, sometimes  
21 it became sticky.

22 Q. You mentioned also the volume  
23 that was different in the civil term than  
24 in the criminal term. Is it more intense  
25 volume of cases? Is that what you mean?

1 O'LEARY

2 A. The motion practice is what I  
3 was addressing.

4 Q. So there was a greater volume of  
5 motions to research and draft decisions  
6 for?

7 A. Oh, yes.

8 Q. So you decided on your own to  
9 leave the civil term and Judge Ruiz'  
10 employ?

11 A. No, Judge Ruiz and I decided we  
12 would divorce.

13 Q. You got a divorce from Judge  
14 Ruiz?

15 A. Yes.

16 Q. Is that an amicable divorce?

17 A. Much more so now.

18 Q. Where did you go after that?

19 A. I thought I had an arrangement  
20 to go back to Criminal Court at the time,  
21 that fell through and I ended up going  
22 with Judge Nelson Roman, staying in the  
23 Civil Term.

24 Q. During the time on your resume,  
25 Defendant's Exhibit 1, from 1988 to 2002,

1 O'LEARY

2 did you ever work as a law clerk for any  
3 other justice or acting justice that's not  
4 listed on your resume there?

5 A. I'm not sure. For a judge or  
6 justice?

7 Q. Either a justice or an acting  
8 justice.

9 A. Okay. I was not formally  
10 assigned to any other person except those  
11 that are listed. Chambers was sometimes  
12 work with another judge where there's  
13 something that's -- as the need calls for  
14 and as the personnel were comfortable. I  
15 did some work with Justice Price while I  
16 was with Judge Ruiz while he was without a  
17 court attorney or while he had a new court  
18 attorney.

19 Q. What time was that? What dates,  
20 if you recall?

21 A. I have no recollection.

22 Q. But you recall it was when you  
23 were formally assigned to Judge Ruiz?

24 A. I believe Judge Price became  
25 sick initially when I was with Justice

1 O'LEARY

2 Bernheim and was either without a court  
3 attorney or had an inexperienced court  
4 attorney.

5 At the end of my time with  
6 Bernheim, I started my time with Ruiz, but  
7 it was an interim type of thing pick up,  
8 it was not a formal assignment.

9 Q. Did you seek that job or did  
10 someone tell you you were assigned to it?

11 A. I still worked for the other  
12 woman.

13 Q. I understand, but this job with  
14 Justice Price, did you seek that job?

15 A. It was not a job, it was a  
16 fill-in. Judge Price would approach the  
17 justice for whom I worked and asked if he  
18 could lend me, do you think she could help  
19 me out with this. This was not a job with  
20 Judge Price.

21 Q. Did you supervise anybody when  
22 you worked with Judge Price?

23 A. Both with Judge Price and with  
24 Judge Ruiz, they were active with the  
25 intern program and the City of Schools

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O'LEARY

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2

program. One time I think Price had six or seven kids, I do mean young adults, into their mid 20s, some high school, some college, some law school, and Judge Ruiz was also very active with those programs. So at one point they started to call me the Price Club, there were that many, and yes.

10

Q. What was your role with respect to those students?

12

A. Supervising them in terms of assignment, work, coordinating with other court attorneys throughout the criminal term. If I say outings, it gives you a different perspective, but there were tours, whether it was at Rikers Island. At one point I think they went to Sing Sing, they did the central booking tours. These were ongoing activities for the summers mostly, but not exclusively.

22

Q. Did you ever perform written evaluations on any of these?

24

A. I wrote recommendations for some of them, including bar recommendations,

1 O'LEARY

2 admissions recommendations for at least  
3 one.

4 Q. By written evaluations, their  
5 performance?

6 A. Not for retention within the  
7 court system.

8 Q. I'm not sure what you mean.

9 A. I did not write recommendations  
10 or evaluations of them in my role as a  
11 court attorney for the court system.

12 Q. Other than recommendations that  
13 you may have written, did you write any  
14 evaluations of their performance or their  
15 duties for any person or body to review?

16 In other words, they were interns, did you  
17 write any kind of formal evaluation of  
18 their performance for whatever group or  
19 school or organization they came from?

20 A. I may have, but I don't recall.

21 Q. Any other supervisory experience  
22 that you had with Judge Ruiz?

23 A. The same confidential that I  
24 worked with with Judge Bernheim came to  
25 Judge Ruiz for a short time.

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1 O'LEARY

2 supervising other attorneys, is that  
3 correct?

4 MR. COREN: In court --

5 MR. SULLIVAN: Anywhere in the  
6 system.

7 MR. COREN: Oh, that is a  
8 different question.

9 MR. SULLIVAN: That was the  
10 original question.

11 A. No.

12 Q. Showing you what's been marked  
13 as Defendant's Exhibit 4, I am going to  
14 ask you to review it and state for the  
15 record what it is?

16 (The witness reviews document.)

17 A. This appears to be a copy of a  
18 job announcement for Deputy Chief Clerk 5  
19 within the Criminal Court, City of New  
20 York, in December of 2002.

21 Q. Just for the record, the  
22 announcement number is 21209, correct?

23 A. Correct.

24 Q. Did you apply for this job in  
25 December of 2002?

1 O'LEARY

2 A. Yes, I did.

3 Q. Did you get an interview for  
4 this job?

5 A. Yes, I did.

6 Q. Drawing your attention to the  
7 section labeled qualifications, would you  
8 please describe for me what, at the time  
9 you applied, what experience you possessed  
10 involving human resources administration?

11 A. None.

12 MR. SULLIVAN: Let the record  
13 reflect that counsel is conferring with  
14 plaintiff.

15 Q. Your answer is no, is that  
16 correct?

17 A. Human resources administration?

18 Q. Yes.

19 A. As I understand, it is a  
20 particular function. In terms of  
21 administration, I have no formal  
22 experience.

23 Q. Would you please describe what  
24 experience that you possessed at the time  
25 you applied for this job regarding budget

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1 O'LEARY

2 Chief Clerk position in December of 2002  
3 sought by the plaintiff.

4 Have you had a chance to look at  
5 that?

6 A. Yes, sir.

7 Q. Serena Springle was the person  
8 that got that job as Deputy Chief Clerk,  
9 is that correct?

10 A. That's my understanding.

11 Q. Do you feel you were more  
12 qualified than Serena Springle for this  
13 job?

14 A. Yes, I do.

15 Q. Why?

16 A. Ms. Springle had spent a  
17 significant amount of time in advance of  
18 this appointment in the Civil Court. At  
19 that point, most of my experience had been  
20 in the arena. Her two years immediately  
21 preceding the appointment, almost three  
22 years, was in housing court, which is an  
23 almost entirely different arena. Her  
24 resume says she has a bachelor's degree in  
25 May of 2004, and posting date there is

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1 O'LEARY

2 2002. So I don't know that she had the  
3 bachelors at the time of this posting.

4 Q. Is there any other reason you  
5 believe you were more qualified than  
6 Serena Springle for this job?

7 A. Within the criminal term, she  
8 had passed the same number of Civil  
9 Service tests as I had. I believe my  
10 background and education gave me more of  
11 an edge. I also had -- you can tell from  
12 her resume what her start date was with  
13 the system, but I had more time in the  
14 system than she did.

15 Q. Anything else?

16 A. No.

17 Q. Ever been an Associate Court  
18 Clerk, have you?

19 A. No.

20 Q. You never served as an Associate  
21 Court Clerk?

22 A. That's correct.

23 Q. You never carried out the duty  
24 of Municipal Court Clerk, have you?

25 A. That's correct.

William Etheridge - Deputy Chief Clerk

Page 1

**From:** Frances O'Leary  
**To:** William Etheridge  
**Date:** Mon, Dec 30, 2002 10:26 AM  
**Subject:** Deputy Chief Clerk

I'm sorry that I can't get there to drop this in person.

Please accept this resume in the stead of the short form one previously sent.

Looking forward to the interview. I'll have a completed USC form with me then. Thanks.

**Serena Springle**  
119-52 Nashville Boulevard  
St. Albans, New York 11412  
Home (718) 341-1138  
Work (212) 374-6249

**COURT EXPERIENCE:**

**CIVIL COURT OF THE CITY OF NEW YORK**

Housing Part: New York County

**Principal Court Clerk:** March 2000 - Present

- Responsible for the supervision of all non judicial personnel and daily court operations;
- Preparation of employee schedules, time/leave, and evaluations;
- Participation in employee hiring panels;
- Representation of Housing Court as Instructor in Civil Court's new employee orientation program, as well as designed and implemented new training materials for Housing Court employees;
- Primary liaison to Resource Center for self-represented litigants;
- Assist the Supervising Judge of the Housing Court with calendar management of the Resolution Parts;
- Review court statistics and manage case processing throughout the various parts of the Housing Court;
- Provide information and assistance to Judges of the Housing and Civil Courts, nonjudicial personnel, litigants, members of the bar, the press and the general public.

**SUPREME COURT OF THE STATE OF NEW YORK**

Criminal Term: New York County

**Associate Court Clerk:** March 1997 - March 2000

- Supervision of Supreme Court Clerk's Office;
- Appropriation of staff to Court parts;
- Preparation and arrangement for training of new clerks;
- Maintenance of court records;
- Provided assistance and information to judges, attorneys, litigants, the press and to the general public.

**Honorable Juanita Bing Newton, Administrative Judge**

Criminal Term: New York County

**Senior Court Clerk/Associate Court Clerk:** July 1995 - July 1999

- Preparation of case activity reports;
- Coordination of matrimonial enforcement part;
- Preparation of intake sheets;
- Indexed law journal cases;
- Maintain court records.

2007 DEC 17 PM 2:27  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**Senior Court Clerk:** February 1993 to March 1997

- Supervision of court personnel;
- Maintain court minutes;
- Maintenance of court records;
- Maintain custody of court exhibits;
- Swore in witnesses, polled jurors;
- Selection of Grand Juries.

**Senior Court Officer,** September 1989 - February 1993

**CIVIL COURT OF THE CITY OF NEW YORK**

New York County

**Court Officer:** February, 1985 to September, 1989

**OTHER EXPERIENCE:**

Capital Awning, 1980 -1985

Full Charge Bookkeeper

Drescher, Dorkin & Kaplan, CPA,

Accounts receivable and accounts payable.

**EDUCATION:**

City College, City of New York

Major: Public Administration

Degree: Bachelor of Arts

May, 2004

International Career Institute, New York, New York

Certificate in Bookkeeping

REFERENCES AVAILABLE UPON REQUEST

SURROGATE'S COURT  
BRONX COUNTY - STATE OF NEW YORK  
851 GRAND CONCOURSE  
BRONX, NEW YORK 10451

LEE L. HOLZMAN  
JUDGE



MICHAEL L. PRISCO  
CHIEF CLERK  
EARNESTINE GLOVER  
DEPUTY CHIEF CLERK

December 8, 2005

**MEMORANDUM:**

**TO:** Hon. Joan B. Carey  
**FROM:** Hon. Lee L. Holzman  
Surrogate  
**SUBJECT:** Chief Clerk VI

Attached you will find all necessary papers pertaining to the above mentioned position.

- 1) Original Employment Announcement (UCS-23)
- 2) Original Interview Summary Sheets (UCS-24) with names of candidates in order of preference:
  - #1 Diana M. Cruz
  - #2 John Raniolo
  - #3 Earnestine Glover
- 3) Original Interview Data Sheets (UCS-19xi)
- 4) Statement of Recruitment and Hiring Efforts (UCS-24A)

Should you require additional information, please feel free to contact our office at (718) 590-4515.